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April 27, 2001

Janet Hand Deixler
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350
Via Federal Express and email: secretary@dps.state.ny.us

RE: Case 01-E-0359 - Petition of New York State Electric & Gas Corporation for Approval of its Electric Price Protection Plan

Dear Secretary Deixler:

The National Energy Marketers Association (NEM) hereby files these letter comments in response to the Notice Requesting Comments issued April 26, 2001, in the instant proceeding.

In his Ruling of April 17, 2001, Judge Stockholm declined to extend trade secret protection to NYSEG's earnings forecasts, aggregated forecast market prices, and forecasts of purchased power quantities and purchased power budget. In so doing, Judge Stockholm weighed the question of whether NYSEG, a regulated utility, has a competitive position that could be harmed by disclosure of the forecast information it sought to protect. Judge Stockholm concluded that NYSEG, "does not have a competitive position for which it is entitled to protection, and that no unfair economic harm would result to NYSEG if its forecasts were disclosed to the public." He further stated that, "the sale of electric commodity in NYSEG's territory continues to be provided in a monopoly setting, not in a competitive market. Accordingly, NYSEG has no competitive position to be harmed." The Judge went on to decide that, "even if NYSEG's economic interests are at stake, those interests are monopolistic and protecting them by rendering its rate case forecasts secret is contrary to public policy." NEM strongly supports Judge Stockholm's Ruling. NYSEG's assertion, as a regulated monopoly, that it has a competitive interest entitled to special protection strains credulity.

Furthermore, in view of the Commission's recently ordered unbundling proceeding,¹ NEM asserts that categories of information that NYSEG seeks to protect will be subject to a "bottom-up" unbundling and cost of service studies. The five categories of market price forecasts at issue are average energy prices, load shape premiums, installed capacity, ancillary services and losses. NEM asserts that these are energy supply costs associated with serving retail load that should be separated out of NYSEG's fully bundled

¹ Case 00-M-0504 - Order Directing Expedited Consideration of Rate Unbundling (Issued and Effective March 29, 2001).

rates.² The information NYSEG seeks to protect is intrinsically linked to competitive functions that should be rendered by competitive service providers and not NYSEG. As such, trade secret protection of the information as forecasted by a monopoly is unwarranted, contrary to stated NYPSC Orders and the public interest. In fact, to keep secret the means by which and details of how NYSEG plans to charge captive customers monopoly rates for competitive services is contrary to public policy and clearly not in the public's interest.

Inasmuch as NYSEG had requested expedited treatment of its filing in this case, its failure to provide the requested information is disturbing. In essence, NYSEG asks the parties to review the plan on an expedited basis without the information necessary to evaluate its merits. NYSEG's failure to produce the information is even more disturbing in view of the fact that Staff requested NYSEG supply information in conformance with the less rigorous filing requirements accepted for gas utilities³ than the more detailed rate filing that would otherwise have been required.

For the foregoing reasons, NEM submits that NYSEG's Appeal of Procedural and Trade Secret Ruling should be denied.

Sincerely,

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cc: ALJ Jeffrey Stockholm (via email and U.S. mail)
Active Parties (via email and U.S. mail)

² See NEM's Initial Brief and Reply Brief in Case 96-E-0891 - In the Matter of New York State Electric & Gas Corporation's Plans for Electric Rate/Restructuring Pursuant to Opinion No. 96-12 - Retail Access Credit Phase.

³ Cases 93-G-0932 and 97-G-1380, Order Clarifying Gas Policy Statement, issued April 1, 1999.